

MATTHEW G. BEVIN Governor

FINANCE AND ADMINISTRATION CABINET DEPARTMENT OF REVENUE

501 HIGH STREET FRANKFORT, KENTUCKY 40620 Phone (502) 564-3226 Fax (502) 564-3875 www.kentucky.gov WILLIAM M. LANDRUM III
Secretary

DANIEL P. BORK Commissioner

In the matter of:

			, Inc.	
Contact:	Attn:	, Inc.	•	FINAL RULING NO. 2016-02 January 14, 2016

Denial of 2012 Application of Income Tax and LLET Credits for Recycling and/or Composting Equipment

FINAL RULING

The Kentucky Department of Revenue (the "Department") has denied
Inc.'s ("2012 Application for Income
Tax/LLET Credit for Recycling and/or Composting Equipment or Major Recycling
Project (the "Recycling Credit Application"). This denial was based upon
failure to satisfy the statutory requirements for the applicability of the Kentucky recycling
credit set forth in KRS 141.390(1)(a) and (b). The table below summarizes the amount
of credit that has been denied.1

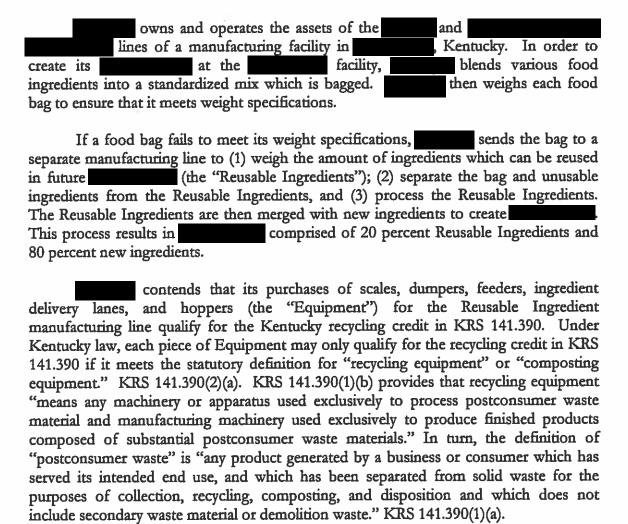
Tax Year	Recycling & Composting Credit Claimed	Recycling & Composting Credit Denied
2012	\$	\$

has protested the Department's denial of its Recycling Credit Application.

¹ The amount that has been denied is based upon a second an amount that has been denied is based upon a second and a second an amount from \$ 100 to \$ 100



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In order for the Equipment to qualify as recycling equipment, the Reusable Ingredients must constitute postconsumer waste. However, a Reusable Ingredient is not a "product generated by a business or consumer which has served its intended end use," as required by the postconsumer waste definition in KRS 141.390(1)(a). In fact, the Reusable Ingredients have not yet passed into the hands of any consumers. Additionally, the intended end use of the Reusable Ingredients is to be eaten as a by consumers, not to fail quality control and be placed back into the manufacturing process. The Reusable Ingredients are, at best, pre-consumer food waste. Consequently, the Reusable Ingredients do not fall within the realm of the statutory definition for postconsumer waste in KRS 141.390(1)(a).

Since the Reusable Ingredients do not constitute postconsumer waste, the Equipment cannot constitute "machinery or apparatus used exclusively to process postconsumer waste material under KRS 141.390(1)(b)." Moreover, even if the Reusable

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Ingredients were postconsumer waste, since the finished frozen meal is comprised of 80 percent new ingredients, the Equipment does not qualify as "manufacturing machinery used exclusively to produce finished products composed of substantial postconsumer waste materials." Finally, to the extent, if any, the Equipment processes any new ingredients, the Equipment would fail to meet the exclusivity requirement in KRS 141.390(1)(b). For all of these reasons, has failed to establish that the Equipment is recycling equipment.

Based on the above, the Equipment does not qualify as recycling equipment eligible for the recycling credit in KRS 141.390. Accordingly, the Department properly denied the Recycling Credit Application.

This letter is the final ruling of the Department of Revenue.

APPEAL

You may appeal this final ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this final ruling, your petition of appeal must be filed at the principal office of the Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714, within thirty (30) days from the date of this final ruling. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the petition of appeal must:

- 1. Be filed in quintuplicate;
- 2. Contain a brief statement of the law and facts in issue;
- 3. Contain the petitioner's or appellant's position as to the law and facts; and
- 4. Include a copy of this final ruling with each copy of the petition of appeal.

The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 3 of 802 KAR 1:010:

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1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;

2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;

- 3. In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, trust, estate, partnership, joint venture, LLC, or any other artificial legal entity, the entity must be represented by an attorney on all matters before the Board, including the filing of the petition of appeal. If the petition of appeal is filed by a non-attorney representative for the legal entity, the appeal will be dismissed by the Board; and
- 4. An attorney who is not licensed to practice in Kentucky may practice before the Board only if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,

DEPARTMENT OF REVENUE

Attorney Manager

Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED